

Article - Estates and Trusts

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§14.5–103.

- (a) In this title the following words have the meanings indicated.
- (b) “Action”, with respect to an act of a trustee, includes a failure to act.
- (c) “Ascertainable standard” means a standard relating to an individual’s health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or § 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on January 1, 2015.
- (d) “Beneficiary” means a person that:
 - (1) Has a present or future beneficial interest in a trust, vested or contingent; or
 - (2) In a capacity other than that of a trustee, holds a power of appointment over trust property.
- (e) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in § 14–301(b) of this article.
- (f) (1) “Discretionary distribution provision” means a provision in a trust that provides that the trustee has discretion, or words of similar import, to determine one or more of the following:
 - (i) Whether to distribute to or for the benefit of an individual or a class of beneficiaries the income or principal or both of the trust;
 - (ii) The amount, if any, of the income or principal or both of the trust to distribute to or for the benefit of an individual or a class of beneficiaries;
 - (iii) Which, if any, among a class of beneficiaries will receive income or principal or both of the trust;
 - (iv) Whether the distribution of trust assets is from income or principal or both of the trust; or
 - (v) When to pay income or principal, except that a power to determine when to distribute income or principal within or with respect to a calendar

or taxable year of the trust is not a discretionary distribution provision if the distribution must be made.

(2) “Discretionary distribution provision” includes a provision in a trust instrument that:

(i) Provides one or more standards or other guidance for the exercise of the discretion of the trustee; or

(ii) Contains a spendthrift provision.

(g) (1) “Environmental law” means a federal, State, or local law, rule, regulation, or ordinance that relates to the protection of the environment.

(2) “Environmental law” includes Title 16 of the Environment Article.

(h) “General power of appointment”, subject to § 14.5–507(b)(7) of this title, means a power of appointment that:

(1) By the terms of the trust specifically authorizes the holder to direct trust property to the holder, the estate of the holder, or the creditors of the holder;

(2) Is held in a capacity other than as a trustee;

(3) Is not limited by an ascertainable standard; and

(4) Is exercisable by the holder or holders without the consent of another person.

(i) (1) “Guardian of the person” means a person appointed by the court or, in the case of a minor with no living parent, by the probated will of a parent of the minor, to make decisions regarding the support, care, education, health, and welfare of a minor or an adult individual.

(2) “Guardian of the person” does not include a guardian ad litem.

(j) “Guardian of the property” means a person appointed by the court to administer the estate of a minor or an adult individual.

(k) “Incapacitated” means the state of having an incapacity.

(l) “Incapacity” means the inability of an individual to manage the individual’s property or financial affairs effectively due to:

- (1) Physical or mental disability;
- (2) Disease or illness;
- (3) Habitual drunkenness;
- (4) Drug addiction;
- (5) Imprisonment;
- (6) Compulsory hospitalization;
- (7) Detention by a foreign power; or
- (8) Disappearance.

(m) “Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

(n) “Jurisdiction”, with respect to a geographic area, includes a state or country.

(o) (1) “Mandatory distribution provision” means a provision in a trust that requires the trustee to make a distribution of income or principal to a beneficiary, including a distribution on termination of the trust.

(2) “Mandatory distribution provision” does not include a provision in a trust that allows the trustee to make a distribution subject to the exercise of the discretion of the trustee even if:

(i) The discretion is expressed in the form of a standard of distribution; or

(ii) The terms of the trust authorizing a distribution couple language of discretion with language of direction.

(p) “Person” means:

- (1) An individual;
- (2) A corporation;

- (3) A business trust;
- (4) An estate;
- (5) A trust;
- (6) A partnership;
- (7) A limited liability company;
- (8) An association;
- (9) A joint venture;
- (10) A government;
- (11) A governmental subdivision;
- (12) An agency;
- (13) An instrumentality;
- (14) A public corporation; or
- (15) Any other legal or commercial entity.

(q) “Power of appointment” means the authority to designate the recipient or recipients of beneficial interests in property.

(r) “Power of withdrawal”, subject to § 14.5–507(b) of this title, means a presently exercisable power to withdraw trust property from a trust for the use or benefit of the power holder, other than a power:

(1) Exercisable by a trustee and limited by an ascertainable standard;

(2) Exercisable by another person only on consent of the trustee or a person holding an adverse interest; or

(3) Exercisable only with respect to trust property having a value that is less than or equal to the greatest of:

(i) The amount specified in § 2041(b)(2) or § 2514(e) of the Internal Revenue Code of 1986, as amended;

(ii) The amount specified in § 2503(b) of the Internal Revenue Code of 1986, as amended, if the donor of the property subject to the power of withdrawal is unmarried at the time of the transfer of the property to the trust; or

(iii) Twice the amount specified in § 2503(b) of the Internal Revenue Code of 1986, as amended, if the donor of the property subject to the power of withdrawal is married at the time of the transfer of the property to the trust.

(s) “Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable, or an interest in the thing.

(t) (1) “Qualified beneficiary” means a beneficiary that on the date the qualification of the beneficiary is determined:

(i) Is a distributee or permissible distributee of trust income or principal;

(ii) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in item (i) of this paragraph terminated on that date without causing the trust to terminate; or

(iii) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date and no power of appointment was exercised.

(2) “Qualified beneficiary” does not include an appointee under the will of a living person or the object of an unexercised inter vivos power of appointment.

(u) “Revocable”, as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(v) (1) “Settlor” means a person, including a testator, that creates or contributes property to a trust.

(2) “Settlor” includes a person that, with other settlors, creates or contributes property to a trust in which case each such person is a settlor of the portion of the trust property attributable to the contribution of that person except to the extent another person has the power to revoke or withdraw that portion.

(w) “Spendthrift provision” means a term of a trust that:

(1) Restrains both voluntary and involuntary transfer of the interest of a beneficiary; or

(2) Restrains involuntary transfer of the interest of a beneficiary and permits voluntary transfer of the interest of a beneficiary only with the consent of a person that is not a beneficiary.

(x) (1) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(2) “State” includes a Native American tribe or band recognized by federal law or formally acknowledged by a state.

(y) (1) “Support provision” means a mandatory distribution provision in a trust that provides that the trustee shall distribute income or principal or both for the health, education, support, or maintenance of a beneficiary, or language of similar import.

(2) “Support provision” does not include a provision in a trust that provides that a trustee has discretion whether to distribute income or principal or both for the purposes under paragraph (1) of this subsection or to select from among a class of beneficiaries to receive distributions in accordance with the trust provision.

(z) “Terms of a trust” means the manifestation of the intent of the settlor regarding the provisions of a trust as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(aa) “Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including amendments to the trust.

(bb) “Trustee” includes an original, an additional, and a successor trustee and a cotrustee.

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